



**BAC 7710-FW-P**

## **POSTAL REGULATORY COMMISSION**

### **39 CFR Part 3050**

**[Docket No. RM2018-2; Order No. 4706]**

#### **Periodic Reporting Requirements**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing revisions to the periodic reporting requirements codified in our regulations. This document informs the public of the proposed rules, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### **SUPPLEMENTARY INFORMATION:**

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## **I. Introduction**

On December 27, 2017, the Postal Service filed a request for the Commission to consider revisions to the periodic reporting requirements codified in 39 CFR part 3050.<sup>1</sup> On January 5, 2018, the Commission established this docket and invited comments regarding the Postal Service's proposed revisions.<sup>2</sup> Based on comments received in response to the Commission's advance notice of proposed rulemaking, the Commission proposes the following revisions to the periodic reporting requirements found in 39 CFR part 3050.

## **II. Background**

The Postal Accountability and Enhancement Act (PAEA) granted the Commission enhanced information gathering and reporting responsibilities. See 39 U.S.C. 3652(e)(1). The PAEA provides that the Commission shall prescribe the content and form of the public reports the Postal Service files with the Commission under section 3652. In Docket No. RM2008-4, the Commission approved its current periodic reporting requirements.<sup>3</sup>

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<sup>1</sup> United States Postal Service Petition for Rulemaking on Periodic Reporting, December 27, 2017 (Petition).

<sup>2</sup> Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, January 5, 2018 (Order No. 4347).

<sup>3</sup> Docket No. RM2008-4, Notice of Final Rule Prescribing Form and Content of Periodic Reports, April 16, 2009 (Order No. 203).

On December 27, 2017, the Postal Service filed a request for the Commission to consider revisions to the periodic reporting requirements. First, the Postal Service requests that the Commission adjust the deadlines for the quarterly Revenue, Pieces, and Weight (RPW) report; the Quarterly Statistics Report (QSR); the quarterly Billing Determinants report; and the monthly National Consolidated Trial Balance and Revenue and Expense Summary (Trial Balance) report to align the deadlines with other financial reporting deadlines. Petition at 1. The Postal Service states that aligning these deadlines with other financial reporting deadlines will avoid potential restatements of the earlier filed reports once the data for the later filed reports are finalized. *Id.* at 3.

Specifically, the Postal Service seeks to move the quarterly and year-end deadlines for the RPW and QSR reports so that they are the same as the Form 10-Q and Form 10-K due dates. *Id.* at 2-3. In addition, the Postal Service requests that the Commission extend deadlines for quarterly Billing Determinants reports to 60 days after the end of Quarters 1, 2, and 3, and 90 days after the end of Quarter 4.<sup>4</sup> The Postal Service also requests that the Commission revise the periodic reporting rules so that the Trial Balance reports and the Monthly Summary Financial reports have the same deadline. *Id.* at 5-6.

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<sup>4</sup> *Id.* at 4. The Postal Service also requests that the Quarter 4 Billing Determinants report be incorporated into the annual Billing Determinants report rather than submitted as a standalone filing. *Id.* The Postal Service states that eliminating the standalone filing would help the Postal Service more effectively allocate scarce time and resources. *Id.*

Second, the Postal Service requests that the Commission modify the format of the Monthly Summary Financial Report to make the report more consistent with the Postal Service's quarterly and annual financial reports. *Id.* at 1. The Postal Service states that the term "Operating Revenue" as used in Tables 1 and 2 of the Monthly Summary Financial Report does not correspond with its usage in its Form 10-K reports. *Id.* at 7. The Postal Service requests revisions to Tables 1 and 2 of the Monthly Summary Financial Report so that the items and amounts reported for total operating revenue reconcile on both tables and the breakdown for revenue more closely aligns with the format in its other financial reports.<sup>5</sup>

Third, the Postal Service requests that the Commission consider eliminating or modifying any reporting requirements that have become unnecessary or irrelevant since implementation of the current periodic reporting rules in 2009. *Id.* at 1. The Postal Service requests that the Commission consider eliminating or modifying these requirements to avoid imposing "unnecessary or unwarranted administrative effort and expense" on the Postal Service. *Id.* at 9 (citing 39 U.S.C. 3652(e)(1)).

### **III. Comments**

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<sup>5</sup> *Id.* The Postal Service also requests updating Table 2 to reflect the name change of Standard Mail to USPS Marketing Mail. *Id.* at 8.

On March 7, 2018, the Public Representative and United Parcel Service, Inc. (UPS) filed comments.<sup>6</sup> On April 6, 2018, the Postal Service and the Parcel Shippers Association (PSA) filed reply comments.<sup>7</sup>

*Public Representative.* The Public Representative divides her discussion into two sections. First, she discusses the guiding principles the Commission should consider when revising its periodic reporting requirements. PR Comments at 2-4. Specifically, she observes that the PAEA outlines three guiding principles for the Commission to consider when determining the content and form of the Postal Service's public reports submitted under 39 U.S.C. 3652. *Id.* at 2. The three guiding principles are whether the requirement "(A) provid[es] the public with timely, adequate information to assess the lawfulness of rates charged; (B) avoid[s] unnecessary or unwarranted administrative effort and expense on the part of the Postal Service; and (C) protect[s] the confidentiality of commercially sensitive information." *Id.* (citing 39 U.S.C. 3652(e)(1)). The Public Representative concludes that, generally, the periodic reporting requirements in 39 CFR part 3050 "enable the Commission to carry out its duties and serve the public interest" and that any revisions should be consistent with the guiding principles in section 3652(e)(1). *Id.* at 4.

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<sup>6</sup> Public Representative Comments on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, March 7, 2018 (PR Comments); Comments of United Parcel Service, Inc. on Advance Notice of Proposed Rulemaking to Revise Periodic Reporting Requirements, March 7, 2018 (UPS Comments).

<sup>7</sup> Reply Comments of the United States Postal Service, April 6, 2018 (Postal Service Reply Comments); Reply Comments of the Parcel Shippers Association (PSA), April 6, 2018 (PSA Reply Comments).

Second, the Public Representative discusses each of the Postal Service's specific requests. In response to the Postal Service's request to revise the filing deadlines for the Trial Balance, RPW, QSR, and Billing Determinants reports, the Public Representative states that she supports "any proposed extensions that would reduce administrative expense or effort expended by the Postal Service, so long as the proposed extensions do not disrupt the Commission's or the public's need for this information on a timely basis." *Id.* at 4-5. The Public Representative suggests an additional revision to the filing deadline for the Monthly Summary Financial Report for the last month of each quarter. *Id.* at 5. She notes that there is no Form 10-Q report filed for the fourth fiscal quarter and suggests that § 3050.28(b)(1) be revised so that Monthly Summary Financial Reports for the last month of each fiscal quarter be due when the Postal Service files the Form 10-Q or the Form 10-K report (whichever is applicable). *Id.* at 5-6.

The Public Representative does not object to the Postal Service's proposed revisions to Tables 1 and 2 of the Monthly Summary Financial Reports. *Id.* at 6-7. Specifically, she notes that the proposed revision to replace "Standard Mail" with "USPS Marketing Mail" simply reflects the Postal Service's request, and the Commission's approval, to change the name of the class. *Id.* at 6. Additionally, she states that the other proposed changes to Tables 1 and 2 "should better align the preliminary financial information" provided in the Postal Service's monthly financial reports with its Form 10-Q and Form 10-K reports. *Id.* She notes that adequate transparency remains because information that would

no longer be included in the revised Tables 1 and 2 remains publicly available in other periodic reports. *Id.* at 6-7.

The Public Representative notes that it is difficult to evaluate the Postal Service's request that the Commission eliminate or modify the scope of the required reports because the Postal Service did not identify any "unnecessary" or "unwarranted" periodic reporting requirements. *Id.* at 7. She states that such an evaluation requires more specific information related to the administrative effort and expense on the Postal Service to meet its periodic reporting requirements. *Id.* Specifically, she notes that it would be helpful if the Postal Service discussed: "the data that must be collected to comply with the rule; the effort and expense incurred to collect the data required by the rule; whether the data would be collected if the rule did not require reporting; the accessibility and availability of the data to the public, other than through the filing of the periodic report required by the rule; the applicable Postal Service data retention policy; whether the report would be generated if the rule did not require reporting; and the effort and expense incurred to generate the report." *Id.* at 7-8.

The Public Representative observes that the current periodic reporting requirements are "designed to minimize administrative effort and expense expended by the Postal Service." *Id.* at 8. For example, she notes that few periodic reporting requirements "impose specific detailed form requirements" and the rules that do impose certain form requirements seek to ensure that the Postal Service provides the data in a consistent and useful manner. *Id.* However, the

Public Representative does note that the Commission could streamline the rules that require duplicative submissions. *Id.*

*UPS.* In its comments, UPS discusses the specific revisions requested by the Postal Service;<sup>8</sup> expresses concern that the Commission provide notice and an opportunity for comment on any proposal to eliminate or modify the Postal Service's periodic reporting requirements;<sup>9</sup> and requests that the Commission require the Postal Service to provide segment-level reporting for its competitive products.<sup>10</sup> In regards to the requested revisions to certain reporting deadlines, UPS acknowledges the "merit in aligning the release of periodic reports," and "supports modifying the reporting deadlines insofar as it relieves the reporting burden on the Postal Service and helps provide more accurate data." *Id.* at 4. However, UPS does not support the requested revisions to the format of the Monthly Summary Financial Report. *Id.* at 5. UPS expresses concern that the requested modification—specifically, the revisions to the definition of operating revenue—"could hamper the ability of the Commission and other interested parties to look at trends or do any longitudinal analysis." *Id.* UPS states that the

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<sup>8</sup> UPS Comments at 4-6.

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> *Id.* at 7-10. UPS notes that the "Postal Service may claim that the entire organization is one segment because of the close integration of their market[.]dominant and competitive products[.]" *Id.* at 8. UPS states that this "close integration" between the market dominant and the competitive products is justification for requiring the Postal Service to report on market dominant and competitive products separately. *Id.* UPS suggests that the requirement that the Postal Service maintain separate accounts for market dominant and competitive products indicates that the PAEA envisioned that the Postal Service would provide financial reports that distinguish between those accounts. *Id.* at 8-9.



Postal Service, a government agency, should not be able to “self-define” the terms it uses in its Form 10-Q and Form 10-K reports and seeks to minimize the Postal Service’s use of self-defined terms. *Id.* at 5-6.

*PSA Reply Comments.* In its reply comments, PSA addresses two issues raised in the UPS Comments. PSA Reply Comments at 1. First, PSA agrees that if the Commission decides to adopt the proposed additional changes to the reporting requirements, that the Commission should “continue its practice of providing notice of the proposed changes and an opportunity for interested parties to comment.” *Id.* Second, PSA disagrees with UPS’s request that “[t]he Commission ensure that all changes requested by the Postal Service increase, rather than decrease, the quality and quantity of the information that is available to the public’ and ‘hold the Postal Service to higher accounting and reporting standards than those imposed on their private sector counterparts.’” *Id.* at 1-2 (quoting UPS Comments at 2). PSA states that the approach proposed by UPS would only increase the Postal Service’s reporting requirements and administrative burden and is inappropriate given that the Postal Service currently provides substantial data on its competitive products in its periodic reports. *Id.* at 2. PSA states such data reporting is “likely much greater than that of its private competitors” and allows the Commission to determine statutory compliance. *Id.* Instead, PSA asserts that the Commission should consider whether new reporting requirements are necessary to allow the Commission to review

compliance and whether the requirements adequately protect proprietary information. *Id.*

*Postal Service Reply Comments.* The Postal Service first addresses the Public Representative's comments that more information is needed about the administrative effort and expense of reporting requirements to determine whether the Commission should eliminate or modify any unnecessary reporting requirements. *Postal Service Reply Comments* at 1. The Postal Service responds that any amount of resources dedicated to producing unnecessary reports contravenes 39 U.S.C. 3652(e)(1)(B) because such reports may no longer aid the Commission. *Id.* at 1-2. The Postal Service states that the Commission's experience since the implementation of the reporting requirements renders the Commission able to assess whether each report remains useful for its intended purpose. *Id.* at 2.

The Postal Service agrees with the Public Representative's proposal that the Commission clarify that its September Monthly Summary Financial Report is due with the submission of the Form 10-K. *Id.* at 3.

The Postal Service addresses UPS's concerns with the Postal Service's use of self-defined terms. *Id.* at 4-5. The Postal Service states that UPS does not identify any problems resulting from prior use of the requested definitions and does not explain why the new format would be any more or any less consistent with U.S. Securities and Exchange Commission (SEC) reporting by private companies. *Id.* at 5. The Postal Service also responds to UPS's suggestion that

the Commission require separate segment-level reporting for market dominant and competitive products. *Id.* at 6. The Postal Service considers such a requirement a “major substantive expansion of the periodic reporting obligations.” *Id.* The Postal Service further states that application of Financial Accounting Standards Board standards “points inexorably toward the conclusion that the Postal Service operates as one segment.” *Id.*

#### **IV. Analysis of Proposed Rule Changes**

##### **A. Legal Authority**

The PAEA requires the Commission to determine the content and form of the Postal Service’s periodic reporting. 39 U.S.C. 3652(e)(1). The Commission may, either on its own motion or on the request of an interested party, initiate proceedings to improve the quality, accuracy, or completeness of the Postal Service data used in assessing statutory compliance. *Id.* 3652(e)(2).

The Postal Service petitioned the Commission to: (1) change the deadlines for certain periodic reports; (2) modify the format of the Monthly Summary Financial Report, and (3) eliminate or modify any existing reporting requirements that are unnecessary. Pursuant to its authority under 39 U.S.C. 3652(e)(1), the Commission makes the following modifications to periodic reporting requirements.

##### **B. Deadlines for Certain Periodic Reports**

The Postal Service proposes to move the deadlines for several periodic reports. These reports include quarterly RPW and QSR reports, quarterly Billing Determinants reports, and monthly Trial Balance reports. Petition at 2-6.

No commenter objected to the proposed deadline modifications. The Public Representative “supports any proposed extensions that would reduce administrative expense or effort expended by the Postal Service,” provided that the Commission and public receive necessary information on a timely basis. PR Comments at 5. Similarly, UPS “supports modifying the deadlines insofar as it relieves the reporting burden on the Postal Service and helps provide more accurate data.” UPS Comments at 4.

The Commission agrees with the Postal Service, the Public Representative, and UPS that the proposed deadlines appear to align with other financial reporting deadlines. Moving the deadlines for these reports should create more streamlined reporting and help ensure that the Postal Service is able to provide timely and accurate financial reports to the Commission. Accordingly, the Commission proposes to modify the following reporting requirements.

1. Section 3050.25 Volume and revenue data.

Proposed § 3050.25(c) is revised to state that quarterly RPW reporting is due within 40 days of the close of Quarters 1, 2, and 3, and 60 days of Quarter 4, but no later than the filing of the Form 10-Q or Form 10-K reports. This modification aligns the RPW reporting deadlines for Quarters 1, 2, and 3 with the

deadlines for filing the Form 10-Q report,<sup>11</sup> and the RPW reporting deadline for Quarter 4 with the deadline for filing the Form 10-K report.<sup>12</sup>

Proposed § 3050.25(d) is revised to extend the QSR reporting deadline to 40 days from the close of Quarters 1, 2, and 3, and 60 days for Quarter 4, but no later than the filing of the Form 10-Q or Form 10-K reports. This modification aligns the QSR deadlines with the deadlines for Form 10-Q report and Form 10-K report filings, respectively.

Proposed § 3050.25(e) is revised to extend the deadline for submitting quarterly Billing Determinants reports to 60 days after the close of Quarters 1, 2, and 3 and 90 days after the close of Quarter 4. This revision allows the Postal Service ample time to produce billing determinants using key inputs, such as the quarterly RPW report. The extension for filing of the Quarter 4 quarterly Billing Determinants report to 90 days aligns it with the deadline for the annual billing determinants report as stated in § 3050.25(b).

## 2. Section 3050.28 Monthly and pay period reports.

Proposed § 3050.28(b) is revised to reflect that the Monthly Summary Financial Report for the last months of Quarters 1, 2, and 3 is due at the time of filing the Form 10-Q report. As the Public Representative notes, the Postal Services files the Form 10-K report, not the Form 10-Q report, after Quarter 4. Accordingly, the Commission proposes to change the deadline for the Monthly

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<sup>11</sup> 39 CFR 3050.40(a)(1).

<sup>12</sup> *Id.* 3050.40(a)(2).

Summary Financial Report for the final month of Quarter 4 to align with the filing of the Form 10-K report. The deadlines for the first two months of each quarter is the 24th day of the following month.

Proposed § 3050.28(c) is revised to align the deadline for filing National Consolidated Trial Balance and Revenue and Expense Summary for the last months of each quarter with the deadlines for the Monthly Summary Financial Report. For the last months of Quarters 1, 2, and 3, the National Consolidated Trial Balance and Revenue and Expense Summary is due with the Form 10-Q report, and for the last month of Quarter 4 it is due with the Form 10-K report. For the first two months of each quarter, the National Consolidated Trial Balance and Revenue and Expense Summary are due on the 24th day of the following month, aligned with the deadline for the Monthly Summary Financial Report.

#### C. Format of Monthly Summary Financial Report

The Postal Service seeks modification of the format of the Monthly Summary Financial Report, as illustrated at § 3050.28(b)(1). Petition at 6-8. The Postal Service proposes to modify Table 1, USPS Monthly Financial Statement, renaming “Total Operating Revenue” as “Operating Revenue” while removing subcomponents “Mail and Services Revenue” and “Government Appropriations.” *Id.* at 7. The Postal Service proposes one line item for “Operating Revenue,” one for “Other Revenue,” and a third line for “Total Revenue.” *Id.* The Postal Service states that this modification is consistent with the reporting requirements and definitions for Form 10-Q and Form 10-K reporting. *Id.* The Postal Service

states that while “Government Appropriations” will no longer be its own line item on the Monthly Summary Financial Report, it will still be a component of “Operating Revenue,” consistent with how it is reported for U.S. Generally Accepted Accounting Principles purposes. *Id.*

The Postal Service also proposes to modify the format of Table 2, Mail Volume and Mail Revenue. *Id.* at 7-8. It seeks to replace the “Total All Mail” input with “Total Operating Revenue,” which would match the “Operating Revenue” input from Table 1. *Id.* at 8. Finally, the Postal Service seeks to change the input for “Standard Mail” to “USPS Marketing Mail,” accurately reflecting the new name of the mail class. *Id.*

UPS requests that the Commission consider parallel SEC reporting definitions for publicly traded delivery companies. UPS Comments at 6. UPS also suggests requiring the Postal Service to reproduce past monthly reports using the proposed new format, or require the Postal Service to produce two reports—one using the new format and one using the old format—for the first 12 months after adoption of the new format. *Id.*

The Postal Service’s proposal to modify the format of the Monthly Summary Financial Report is consistent with the definition of “operating revenue” for purposes of Form 10-K reporting.<sup>13</sup> The Commission does not identify any of the changes as diminishing the amount of adequacy of the information provided.

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<sup>13</sup> United States Postal Service, 2017 Report on Form 10-K, November 14, 2017, at 19.

While line inputs for “Mail and Service Revenue” and “Government Appropriations” will collapse into the new “Operating Revenue” input, the information specific to those categories will remain available. For example, the amount reported for “Government Appropriations” in Table 1 is located in the monthly filed Postal Service “National Trial Balance” in account number 41431.000 “Free and Reduced Rate Mail.”<sup>14</sup> Given that the proposal does not appear to disrupt the ability of the Commission or the public to access timely and adequate information, the Commission proposes the following rule modifications.

1. Section 3050.28(b)(1), Table 1 – USPS Monthly Financial Statement.

Proposed § 3050.28(b)(1) changes the input “Total Operating Revenue” to “Total Revenue” in Table 1. The existing input for “Operating Revenue” will remain, but the component inputs “Mail and Services Revenue” and “Government Appropriations” are removed. A new heading, “Revenue,” holds the inputs for “Operating Revenue,” a new input for “Other Revenue,” and their combined sum in the new “Total Revenue” input.

2. Section 3050.28(b)(1), Table 2 – Mail Volume and Mail Revenue.

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<sup>14</sup> See, e.g., United States Postal Service, National Trial Balance and Statement of Revenue and Expenses, March 2018, May 10, 2018, Excel file “National Trial Balance – Redacted March 2018 (FY 2018).xls,” row 907.



Proposed § 3050.28(b)(1) changes the current input of “Standard Mail” to “USPS Marketing Mail” in Table 2. This change is consistent with the change to the name of the class, approved in Order No. 3670.<sup>15</sup>

The Commission considers the Postal Service’s proposal to rename “Total All Mail” with “Total Operating Revenue” to be potentially confusing. The components within the input are “Volume” and “Revenue.” To avoid having an input for the “Volume” of “Total Operating Revenue,” the Commission proposes to remove the “Total All Mail” input and its components. Instead, the Commission proposes to add distinct inputs for “Total Volume” and “Total Operating Revenue.” The “Total Operating Revenue” input will match the “Operating Revenue” input from Table 1.

D. Modifications deemed necessitated by the public interest.

Though the Postal Service requests that the Commission eliminate or modify any unnecessary reporting requirements, it does not offer any specific suggestions. Petition at 9-10.

UPS urges the Commission to require segment-level reporting for competitive products. UPS Comments at 7. Because the PAEA requires a level of structural separation of market dominant and competitive products for accounting purposes, UPS states the Commission should require separate segment-level reporting for competitive products. *Id.* at 8, 10.

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<sup>15</sup> Docket No. R2017-1, Order on Price Adjustments for Special Services Products and Related Mail Classification Changes, December 15, 2016, at 18 (Order No. 3670).

In prescribing the content and form of annual reports, the Commission must consider the adequacy of the information to assess the lawfulness of rates charged. 39 U.S.C. 3652(e)(1)(A). The Commission finds that the current approach of reporting as a single segment is adequate for the purposes of determining compliance. Furthermore, in consideration of 39 U.S.C. 3652(e)(2)(A), the Commission does not find that the practice of reporting as a single segment is inaccurate or in need of substantial improvement. Accordingly, the Commission does not adopt the UPS proposal to require segment-level reporting for competitive products.

The Commission has considered all comments and reply comments and has evaluated the necessity of modifications to the financial reporting requirements. The Commission proposes the following changes.

1. Section 3050.21 Content of the Postal Service's section 3652 report.

The Commission has identified several areas where, in the course of preparing the Annual Compliance Determination (ACD), more detailed annual financial reporting would better enable the Commission to assess PAEA compliance. For the required information, the Commission has, to date, been able to request the information from the Postal Service during the compressed timeline of the proceeding, which results in the submission of the necessary information but creates a burden on the Commission and the Postal Service to identify where information gaps exist and produce the information required to fill them in a compressed timeframe. In order to streamline the ACD process and

eliminate the administrative effort of both the Postal Service and Commission during Annual Compliance Review dockets, the Commission proposes to add certain information to the required content of the Postal Service's section 3652 report.

*Section 3050.21(f)(6).* In the FY 2016 ACD, the Commission directed the Postal Service to provide information demonstrating that noncompensatory bilateral agreements improve the net financial position of the Postal Service over Universal Postal Union (UPU) default terminal dues rates.<sup>16</sup> The Commission finds such information necessary to determine whether market dominant negotiated service agreements (NSAs) are compliant with 39 U.S.C. 3622(c)(10)(A). Accordingly, the Commission proposes to add § 3050.21(f)(6). The proposed section requires the Postal Service to file with its Annual Compliance Report, documentation demonstrating that noncompensatory market dominant NSAs improve the Postal Service's net financial position or enhance the performance of mail preparation, processing, transportation, or other functions.

*Section 3050.21(j).* In Docket No. ACR2017, Chairman's Information Request No. 7 requested that the Postal Service provide a distribution of market dominant and competitive fees found in the RPW report.<sup>17</sup> The Postal Service

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<sup>16</sup> Docket No. ACR2016, Annual Compliance Determination, March 28, 2017, at 69 (FY 2016 ACD).

<sup>17</sup> Docket No. ACR2017, Chairman's Information Request No. 7 and Notice of Filing Under Seal, January 23, 2018, question 3 (CHIR No. 7).

responded to CHIR No. 7, providing the mail fee distributions for both market dominant<sup>18</sup> and competitive mail.<sup>19</sup> The Commission used this information to prepare the FY 2017 ACD and considers the information necessary for future determinations of compliance. To this end, the Commission proposes revising § 3050.21(j). As currently constructed, the section requires the Postal Service to provide any information it believes will help the Commission evaluate compliance with title 39. The Commission proposes to move that requirement to § 3050.21(n), placing it at the end of the list of annual reporting requirements. The Commission's proposal replaces the current § 3050.21(j) with a requirement that the Postal Service provide a distribution breakdown of mail fees for market dominant and competitive products. The purpose of the proposed change is to provide the Commission each year with the same information that the Postal Service provided in response to Docket No. ACR2017, CHIR No. 7, question 3.

*Section 3050.21(k).* In Docket No. ACR2017, Chairman's Information Request No. 1 requested data related to several international mail products.<sup>20</sup> The questions relating to these products included requests for information on quarterly and annual data on third-party service performance measurements.<sup>21</sup>

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<sup>18</sup> Docket No. ACR2017, Responses of the United States Postal Service to Questions 1-3 of Chairman's Information Request No. 7, January 30, 2018, question 3, Excel file "Resp.Q.3.Attach A\_MD Fee Distrbtn.xlsx."

<sup>19</sup> Docket No. ACR2017, Library Reference USP-FY17-NP36, January 30, 2018.

<sup>20</sup> Docket No. ACR2017, Chairman's Information Request No. 1, January 5, 2018 (CHIR No. 1).

<sup>21</sup> See Docket No. ACR2017, CHIR No. 1, questions 2, 3, 4, 7, 8, 10, 15, and 16.

Also requested was the amount of forfeited revenue for failing to meet the applicable service performance requirements. *Id.* questions 4, 10, and 16.a. The Postal Service provided all of the requested information.<sup>22</sup> The Postal Service's Library Reference USPS-FY17-NP31 provided the Commission with more complete and accurate financial information regarding certain products.<sup>23</sup> The Commission finds that having such information included as part of the Postal Service's annual filing, rather than in response to an information request, will better assist the Commission in its task of evaluating compliance with title 39. Including the information would reduce the burden on the Commission and Postal Service of identifying and providing the necessary information during the compressed timeline of the annual review. The Commission accordingly proposes to add § 3050.21(k). The new section requires that the Postal Service provide any third-party service performance results where a financial penalty or bonus is applied, and to provide the amount of any forfeited revenue. This requirement will apply to all market dominant and competitive products, including NSAs. The information will provide more accurate revenue analysis for the products subject to third-party service performance measurements.

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<sup>22</sup> Docket No. ACR2017, Responses of the United States Postal Service to Questions 1-16 of Chairman's Information Request No. 1, January 12, 2018 (Docket No. ACR2017, Responses to CHIR No. 1); Library Reference USPS-FY17-NP31, January 12, 2018.

<sup>23</sup> In its Docket No. ACR2017, Responses to CHIR No. 1, question 15, the Postal Service indicated that service performance measurements for Inbound Parcel Post are only available for the periods January through June and July through August. The Postal Service provided this data in Library Reference USPS-FY17-NP31.

*Section 3050.21(l)*. The Commission further proposes to reduce the necessity of information requests by adding a requirement that the Postal Service provide all total workhour data and data sources, showing workhour measurements by Labor Distribution Code. In Docket No. ACR2017, Chairman's Information Request No. 2 requested that the Postal Service provide this data to supplement total workhour information listed in the annual report on Form 10-K.<sup>24</sup> The Postal Service provided the workhour data and data sources in an Excel file.<sup>25</sup> The Commission uses this information in its ACD and seeks this information in future years in substantially the same format. Accordingly, the Commission proposes to add § 3050.21(l). The proposed requirement directs the Postal Service to provide all total workhour data and data sources showing workhour measurements by Labor Distribution Code. The Commission finds that this requirement will reduce the need for future information requests for workhour data.

*Section 3050.21(m)*. In recent ACD reports, the Commission has continually expressed concerns about the Inbound Letter Post product. For example, in the FY 2017 ACD report, the Commission "reiterate[d] its concern that the UPU pricing regime for the Inbound Letter Post product continues to

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<sup>24</sup> Docket No. ACR2017, Chairman's Information Request No. 2, January 10, 2018, question 3 (CHIR No. 2).

<sup>25</sup> Docket No. ACR2017, Responses of the United States Postal Service to Questions 1-19 of Chairman's Information Request No. 2, January 17, 2018, question 3, Excel file "ChIR.2.Q.3.LDC.Workhours - FY17.xlsx."

result in noncompensatory terminal dues.”<sup>26</sup> After a brief period of improvement, the contribution for the Inbound Letter Post product has decreased from negative \$33 million in FY 2011 to negative \$170 million in FY 2017.<sup>27</sup> In fact, the trend of negative contribution existed well before the PAEA. The Commission’s precursor, the Postal Rate Commission, also identified a trend of net loss in contribution for Inbound Letter Post in its annual reports to Congress on international mail for FY 1998 to FY 2006.<sup>28</sup> The Postal Service has provided a myriad of explanations for the increasingly poor financial performance of the Inbound Letter Post product, including increasing costs,<sup>29</sup> increasing volume,<sup>30</sup> increasing weight,<sup>31</sup> and failing to meet UPU quality-of-service targets.<sup>32</sup>

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<sup>26</sup> Docket No. ACR2017, Annual Compliance Determination, March 29, 2018, at 68 (FY 2017 ACD). See FY 2016 ACD at 66; Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 70 (FY 2015 ACD); Docket No. ACR2014, Annual Compliance Determination, March 27, 2015, at 53 (FY 2014 ACD); Docket No. ACR2013, Annual Compliance Determination, March 27, 2014, at 59 (FY 2013 ACD); Docket No. ACR2012, Annual Compliance Determination, March 28, 2013, at 143 (FY 2012 ACD); Docket No. ACR2011, Annual Compliance Determination, March 28, 2012, at 143-144 (FY 2011 ACD); Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 130-131 (FY 2010 ACD); Docket No. ACR2009, Annual Compliance Determination, March 29, 2010, at 108-109 (FY 2009 ACD); Docket No. ACR2008, Annual Compliance Determination, March 30, 2009, at 81 (FY 2008 ACD); Docket No. ACR2007, Annual Compliance Determination, March 27, 2008, at 115, 118 (FY 2007 ACD).

<sup>27</sup> FY 2017 ACD at 65; FY 2011 ACD at 144.

<sup>28</sup> FY 2008 ACD at 82; FY 2007 ACD at 116. Pursuant to section 3663 of the Postal Reorganization Act, the Commission issued eight annual reports, apart from IM99-1, to Congress covering Fiscal Years 1998 through 2005. See Docket Nos. IM99-1, IM2000-1, IM2001-1, IM2002-2, IM2003-1, IM2004-1, IM2005-1, and IM2006-1.

<sup>29</sup> FY 2017 ACD at 66; FY 2015 ACD at 69; FY 2012 ACD at 145.

<sup>30</sup> FY 2017 ACD at 66.

<sup>31</sup> FY 2013 ACD at 60; FY 2012 ACD at 145.

<sup>32</sup> FY 2009 ACD at 109; FY 2008 ACD at 82.

In recent ACD reports, the Commission has conducted trend analysis for products for which the Commission has identified ongoing issues. For example, for each fiscal year since the passage of the PAEA, the Commission has found that the Periodicals class failed to generate revenue sufficient to cover attributable costs.<sup>33</sup> In the FY 2017 ACD report, the Commission analyzed the volume, revenue, attributable cost, and contribution for the Periodicals class for FY 2007 to FY 2017. FY 2017 ACD at 45. The Commission also analyzed the unit revenue, unit attributable cost, and unit contribution for Periodicals for the same time period. *Id.* at 46. The Commission also provided analysis of the volume, revenue, attributable cost, and contribution for the Outside County Periodicals and Within County Periodicals products specifically.<sup>34</sup>

In analyzing the continuing issues with the Periodical class, the Commission also evaluated how increasing unit cost and decreasing unit revenue for Periodicals resulted in a decrease in contribution. FY 2017 ACD at 46. The Commission discussed factors that related to unit revenue and attributable costs for Outside County Periodicals, such as the change of mail mix and the unit costs for various presort levels within the product (e.g., Carrier Route, 5-Digit, and 3-Digit). *Id.* at 49.

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<sup>33</sup> FY 2017 ACD at 45-46; FY 2016 ACD at 42-43; FY 2015 ACD at 42-43; FY 2014 ACD at 33-34; FY 2013 ACD at 42-43; FY 2012 ACD at 25; FY 2011 ACD at 16; FY 2010 ACD at 90-91; FY 2009 ACD at 74; FY 2008 ACD at 54, 56; FY 2007 ACD at 68.

<sup>34</sup> See Docket No. ACR2017, Library Reference PRC-LR-ACR2017-5, March 29, 2018, Excel file "FY 2017 Periodicals Cost Coverage.xlsx," tab "Cost Coverage."



As the result of the ongoing concerns expressed by the Commission (and echoed by participants) regarding the financial performance of the Inbound Letter Post product,<sup>35</sup> the Commission plans to use the aggregated Inbound Letter Post revenue, volume, attributable cost, and contribution data that would be submitted under the proposed rule to analyze trends that may result in lower contribution from certain UPU country groups. Such analysis could help the Commission more accurately identify issues within the Inbound Letter Post product and identify appropriate remedial actions.

Accordingly, the Commission proposes to add § 3050.21(m). The new section requires that the Postal Service provide Inbound Letter Post revenue, volume, attributable cost, and contribution data aggregated by UPU country group and by shape for the preceding five fiscal years when it files its Annual

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<sup>35</sup> See Docket No. IM2016-1, Congressional Letter to Secretary of State Rex Tillerson and Postmaster General Megan Brennan, November 8, 2017; Docket No. ACR2017, Comments of James Smaldone, Founder & CEO, Mighty Mug, Inc., January 25, 2018, at 1-2; Docket No. ACR2017, Comments of National Association of Manufacturers on Order No. 4377, January 24, 2018, at 2; Docket No. ACR2017, Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, January 24, 2018, at 2-3; Docket No. ACR2017, Comments of the Honorable Kenny Marchant on Determination to Unseal the Material Filed in Response to Chairman's Information Request No. 1, Question 1, January 25, 2018, at 1-2; Docket No. ACR2017, Comments of US Chamber of Commerce, January 25, 2018, at 1-2; Docket No. ACR2017, Comments of SBE Council Related to Inbound Letter Post, February 20, 2018, at 1-2; Docket No. ACR2017, Comments of United Parcel Service, Inc. in Response to Notice of Preliminary Determination to Unseal the Postal Service's Response to Chairman's Information Request No. 15, February 23, 2018, at 3-4; Docket No. ACR2017, Reply Comments of United Parcel Service, Inc. on United States Postal Service Motion for Reconsideration of Order No. 4551, April 13, 2018, at 4; Docket No. ACR2017, Comments of U.S. Chamber of Commerce, April 13, 2018, at 1; Docket No. IM2018-1, Comments Received from U.S. Representatives Kenny Marchant and Ralph Abraham, July 3, 2018, at 1; Docket No. IM2018-1, Comment Received from U.S. Senator Bill Cassidy, M.D., July 3, 2018, at 1.

Compliance Report. The Commission finds that this requirement will reduce the need for future information requests for aggregated Inbound Letter Post data.

*Section 3050.21(n).* The Commission proposes to move the requirement that the Postal Service provide any other information that it anticipates will help the Commission evaluate compliance. The Commission finds it appropriate to place this general requirement at the end of the list of items included in the Annual Compliance Report. The substance of former § 3050.21(j) will be unchanged. The requirement will only be renumbered as § 3050.21(n).<sup>36</sup>

## 2. Section 3050.60 Miscellaneous Reports and Documents.

The Commission, having considered whether any current reporting requirements are unnecessary, proposes to modify § 3050.60(c). The Postal Service provides a master list of publications and handbooks whenever changed, in accordance with § 3050.60(b). The Commission welcomes those publications and handbooks in electronic form, as it would reduce the administrative effort of both the Postal Service and the Commission without degrading the utility of the publication or handbook. Accordingly, the Commission proposes to revise § 3050.60(c) to require only an electronic copy of all changed publications and handbooks.

## V. Solicitation of Comments

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<sup>36</sup> Current § 3050.21(a) requires the annual report to provide the items listed in paragraphs (b) through (j) of § 3050.21. Proposed paragraphs (k) through (n) necessitate that the Commission revise § 3050.21(a) to require the report to include the items listed in paragraphs (b) through (n).

The Commission invites interested persons to comment on the changes proposed in this rulemaking. Comments are due no later than 30 days after publication of this Notice in the **Federal Register**.

## **VI. Conclusion**

*It is ordered:*

1. The Commission proposes to amend existing periodic reporting rules located at 39 CFR part 3050.

2. Lauren A. D'Agostino will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this rulemaking proceeding.

3. Interested persons may submit comments no later than 30 days from the date of publication of this Notice in the **Federal Register**.

4. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

Vice Chairman Hammond dissenting.

### **List of Subjects in 39 CFR Part 3050**

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend Chapter III of title 39 of the Code of Federal Regulations as follows:

### **PART 3050—PERIODIC REPORTING**

1. The authority citation for part 3050 continues to read as follows:

**Authority:** 39 U.S.C. 503, 3651, 3652, 3653.s

2. Amend § 3050.21 by:

- a. Revising paragraph (a),
- b. Adding paragraph (f)(6),
- c. Revising paragraph (j), and
- d. Adding paragraphs (k), (l), (m), and (n).

The additions and revisions read as follows:

#### **§ 3050.21 Content of the Postal Service's section 3652 report.**

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its costs, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the

United States Code. The report shall provide the items in paragraphs (b) through (n) of this section.

\* \* \* \* \*

(f) \* \* \*

(6) Provide financial or other supporting documentation that demonstrates that noncompensatory market dominant negotiated service agreements improve the net financial position of the Postal Service over default rates or enhance the performance of mail preparation, processing, transportation, or other functions.

\* \* \* \* \*

(j) For market dominant and competitive products, provide a distribution breakdown of mail fees, including all underlying calculations and source workpapers;

(k) For market dominant and competitive products, including negotiated service agreements, provide any third-party service performance results upon which any financial penalty or bonus is determined, and the amount of any forfeited revenue;

(l) Provide all total workhour data and data sources showing workhour measurements by Labor Distribution Code;

(m) For the Inbound Letter Post product, provide revenue, volume, attributable cost, and contribution data by Universal Postal Union country group and by shape for the preceding five fiscal years; and

(n) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the applicable provisions of title 39 of the United States Code.

3. Amend § 3050.25 by revising paragraphs (c), (d), and (e) to read as follows:

**§ 3050.25 Volume and revenue data.**

\* \* \* \* \*

(c) Revenue, pieces, and weight by rate category and special service by quarter, within 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4, but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b);

(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4 but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b); and

(e) Billing determinants within 60 days of the close of Quarters 1, 2, and 3 of the fiscal year and 90 days after Quarter 4.

4. Amend § 3050.28 by revising paragraph (b), tables 1 and 2 in paragraph (b)(1), and paragraph (c) to read as follows:

**§ 3050.28 Monthly and pay period reports.**

\* \* \* \* \*

(b) Monthly Summary Financial Report on the 24th day of the following month, except that the reports for the last months of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10-Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10-K report is provided;

(1) \* \* \*

Table 1 – USPS Monthly Financial Statement

Month, Fiscal Year

[\$ millions]

[illegible]

Total Market Dominant Volumes										
Total Competitive Product Volumes										
Total Mail Volumes										
Total Workhours (Millions)										
Total Career Employees										
Total Non-Career Employees										

Table 2 – Mail Volume and Mail Revenue  
Month, Fiscal Year  
[Thousands]

	Current Period			Year-to-Date		
	Actual	SPLY	% SPLY var.	Actual	SPLY	% SPLY var.
Market Dominant Products:.....						
First Class:						
Volume.....						
Revenue.....						
Periodicals:						
Volume.....						
Revenue.....						
USPS Marketing Mail:						
Volume.....						
Revenue.....						
Package Services:						
Volume.....						
Revenue.....						
All Other Market Dominant Mail:						
Volume.....						
Revenue.....						
Total Market Dominant Products:						
Volume.....						
Revenue.....						
Total Competitive Products						



Volume.....						
Revenue.....						
Total Operating Revenue: .....						
Total Volume.....						

\* \* \* \* \*

(c) National Consolidated Trial Balances and the Revenue and Expense Summary on the 24th day of the following month, except that the reports for the last month of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10-Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10-K report is provided;

\* \* \* \* \*

5. Amend § 3050.60 by revising paragraph (c) to read as follows:

**§ 3050.60 Miscellaneous reports and documents.**

\* \* \* \* \*

(c) The items listed in paragraph (b) of this section in electronic form;

\* \* \* \* \*